

December 8, 2004

Mr. Tim Hall
California Integrated Waste
Management Board
1001 I Street
Sacramento, CA 95814

Mr. Dmitri Smith
California Integrated Waste
Management Board
1001 I Street
Sacramento, CA 95814

Re: Cal/EPA EJ Action Plan Implementation: Preliminary Comments regarding the Definition of "Precautionary Approach"

Dear Mr. Hall and Mr. Smith:

Following are Western Growers comments regarding the definition of "precautionary approaches" or "precautionary approach" under Cal/EPA's Environmental Justice Action Plan (the "EJ Action Plan"). We support the comments recently submitted by the California Council for Environmental and Economic Balance. In particular, we urge you to consider the following recommendations as you deliberate on these very important definitions.

While we support Cal/EPA's effort to define these terms under the EJ Action Plan, it is important to note that Cal/EPA's Advisory Committee on Environmental Justice recognized that the BDOs already use a precautionary approach in many of their programs.

We believe that environmental justice programs should use clearly defined terms. Clear terms allow Cal/EPA and stakeholder groups to have a common understanding of agency environmental justice policies. Using these guidelines, we suggest that Cal/EPA employ the following definition for "precautionary approach": "Precautionary approach" means the application of judicious and responsible decision making based on best available science and on the weighing of the level of scientific uncertainty and the potential risk of damage. A precautionary approach is based on the recognition that the absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm." This statement is based on language from the document that Cal/EPA has referenced in the recent workshops from the U.S. Commission on Ocean Policy and the Canadian document entitled A Framework for the Application of Precaution in Science-Based Decision Making About Risk.

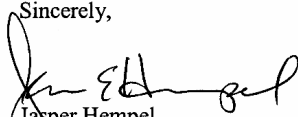
In addition to establishing a reasonable definition of "precautionary approach" it is equally important to establish guidelines to ensure that the Action Plan will be implemented in a rational, objective fashion. We understand that Cal/EPA is developing the definition at this time and plans to develop guidelines a later date; however, we thought it would be constructive to offer some initial suggestions regarding the guidelines:

- The criteria for triggering the precautionary approach should be clear and science-based. For example, mere speculation about potential harm should **not** trigger review under the precautionary approach.
- Once review under the precautionary approach is triggered, the first level of decision is whether agency action is needed.
- If action is needed, the appropriate action will depend on the level of scientific uncertainty about the potential risk of damage. The action should be targeted at the sources of the risk in an equitable fashion.
- If agency action is needed, the appropriate action can be selected from a range of actions depending on the level of scientific uncertainty and the potential risk of damage. Such actions may include: 1) information and guidance; 2) public awareness/involvement/education campaigns, 3) research, monitoring or further data collection; 4) incentive programs; 5) command and control regulations; and 6) risk reduction programs including the selection of pollution prevention practices by businesses, etc.
- The process should be transparent.
- The precautionary approach should take into account the **benefits** of the activity or project in determining the appropriate action.
- Required measures should be reasonably feasible, cost-effective and equitable.
- The process should recognize that it is impossible to prove a negative (i.e., the complete absence of health risk).
- Fair and consistent application is important.
- Environmental program decisions have impacts beyond environmental protection. While protecting public health and the environment, Cal/EPA needs to avoid decisions that harm the business climate and the retention and creation of jobs. (A strong economy and the jobs that come with it are good for public health.)

Cal/EPA's existing programs have been very successful in improving environmental protection. Cal/EPA should not move away from the current, effective path of focusing on documented environmental problems. Additionally, as the BDOs identify potential gaps in current precautionary programs and take steps to address those gaps, it is critical that the agencies be cognizant of the benefits of the product or operation involved and potential impacts on business climate and job creation and retention.

We look forward to continued discussions with Cal/EPA and CIWMB staff and other stakeholders on these issues. If you have any questions, or if you would like to discuss the comments, please contact me at (949) 863-1000.

Sincerely,


Jasper Hempel
Executive Vice President

cc: The Honorable Terry Tamminen
The Honorable James Branham
Ms. Tam Doduc

